



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0749]

RIN 1625-AA08

Special Local Regulation; Oceanside Harbor, Oceanside, CA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on the waters offshore Oceanside and within Oceanside Harbor, California, during the Ironman 70.3 Oceanside marine event. This action is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels of the triathlon, and general users of the waterway. This rule would prohibit persons and vessels from entering into, transiting through, anchoring, blocking, or loitering within the event area unless authorized by the Captain of the Port San Diego or a designated representative.

DATES: This rule is effective from 5:30 a.m. to 10:30 a.m., on October 30, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0749 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John Santorum, Waterways Management, U.S.

Coast Guard Sector San Diego, CA; telephone (619) 278-7656, e-mail

D11MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish this special local regulation by October 30, 2021. The Coast Guard was given short notice from the event sponsor that the date of the the event would differ from the existing annual marine event as outlined in 33 CFR 100.1101, Table 1 to § 100.1101, Item No. 2. Therefore, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. This regulation is necessary to ensure the safety of life on the navigable waters offshore Oceanside and within Oceanside Harbor during the marine event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to ensure the safety of life on the navigable waters offshore Oceanside and within Oceanside Harbor during the marine event on October 30, 2021.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1236). The Captain of the Port Sector San Diego (COTP) has determined that a large amount of swimmers offshore Oceanside and within Oceanside Harbor associated with the Ironman 70.3 Oceanside marine event on October 30, 2021, poses a potential safety concern. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters offshore Oceanside and within Oceanside Harbor while the event is occurring.

IV. Discussion of the Rule

This rule establishes a special local regulation from 5:30 a.m. to 10:30 a.m. on October 30, 2021. This special local regulation will cover all navigable waters, from surface to bottom, on a pre-determined course offshore Oceanside and within Oceanside Harbor, California, beginning at the starting point of the event at Oceanside Harbor Beach, proceeding southwest to the first turn marker, continuing northwest past the jetty, proceeding northeast through the harbor channel, then southeast into Oceanside Harbor before concluding at the finish line within Oceanside Harbor. The duration of the temporary special local regulation is intended to ensure the safety of vessels, event participants, and these navigable waters during the scheduled marine event. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. The affected portion of the navigable waterway offshore Oceanside and in Oceanside Harbor will be of very limited duration, during morning hours when vessel traffic is historically low and is necessary for safety of life to participants in the event. Moreover, the Coast Guard would make a post in the Local Notice to Mariners with details on the regulated area, as well as, issue a Safety Marine Information Broadcast over Channel 22A.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the special local regulation may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction

and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary special local regulation that will limit access to Oceanside Harbor and certain areas offshore Oceanside for 5 hours, from 5:30 a.m. until 10:30 a.m. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part

100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T11-0076 to read as follows:

§ 100.T11-0076 Ironman 70.3 Oceanside, Oceanside, California.

(a) *Regulated area.* The regulations in this section apply to the following area:
all navigable waters, from surface to bottom, on a pre-determined course offshore
Oceanside and within Oceanside Harbor, beginning at the starting point of the event at
Oceanside Harbor Beach, proceeding southwest to the first turn marker, continuing
northwest past the jetty, proceeding northeast through the harbor channel, then southeast
into Oceanside Harbor before concluding at the finish line within Oceanside Harbor.

(b) *Definitions.* As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a
Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and
a Federal, State, and local officer designated by or assisting the Captain of the Port San
Diego (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels registered with the event sponsor as a
participants in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting
through, anchoring in, or remaining within the regulated area described in paragraph (a)
of this section unless authorized by the Captain of the Port San Diego or their designated
representative.

(2) Vessels requiring entry into this regulated area must request permission from
the COTP or a designated representative. They may be contacted on VHF-FM Channel
21A or by telephone at 619-278-7033.

(3) The COTP will provide notice of the regulated area through advanced notice via Local Notice to Mariners and Safety Marine Information Broadcasts on Channel 22A.

(d) *Enforcement period.* This section will be enforced from 5:30 a.m. until 10:30 a.m., on October 30, 2021.

Dated: October 19, 2021.

T. J. Barelli,

Captain, U.S. Coast Guard,

Captain of the Port San Diego.

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